

Attorney Docket No. W2100/262177

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Kleven, et al

Serial No.: 10/061,476

Filed: January 31, 2002

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For: Content Processing and Distribution Systems and Processes

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I hereby certify that this correspondence is being filed via EFS Web with the United States Patent Office on October 11, 2007.

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DATE: October 11, 2007

Attorney Docket No. W2100/262177

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Included below is a concise summary of arguments for which this review is requested. A Notice of Appeal accompanies this request.

REASONS FOR THE REQUEST

The Examiner's rejection of Claims 1-20 in the most recent Office Action omits essential elements required to establish a prima facie rejection. In particular, the Examiner 1) did not properly reconsider and again examine the application after the Amendment and Response filed April 30, 2007 and 2) did not cite a reference that discloses at least the claim elements of transforming and combining said source content to produce new content and transforming and combining components of said first content signal and said second content

signal and processing and organizing said video content to form said new content. In light of these clear deficiencies in the rejection, a pre-appeal brief panel review is requested.

In the most recent Office Action, the Examiner indicated in the Response to Arguments section that the Examiner did not consider the claim language or the arguments related to transforming and combining source content to create new content since the claims include the phrase “adapted to”. *See* Office Action, page 6. A telephone call was made to the Examiner on September 26, 2007 to clarify the Examiner’s comments. The Examiner confirmed that the Examiner did not consider these claim elements or arguments. With respect to Claims 12 and 20, the Examiner’s refusal to consider the elements of “transforming and combining components of said first content signal and said second content signal into video content” and “processing and organizing said video content to form said new content” is clear error since Claims 12 and 20 do not recite the phrase “adapted to.” With respect to Claim 1, even though the claim includes the phrase “adapted to”, it is submitted that was error for the Examiner to ignore the claim language and the arguments related to the claim language, since the inclusion of the phase is not dispositive and the Examiner did not address the facts of this particular case. MPEP 2111.04 states that the phase “adapted to” may raise a question as to the limiting effect of the language in a claim, but that the determination of whether the clause is a limitation depends upon the specific facts of the case. The failure to consider the claim language and the arguments and to reconsider the application is in contradiction to 37 C.F.R. § 1.112, which provides for reconsideration before a final action.

Despite that Examiner’s allegation that the inclusion of the phase “adapted to” does not positively recite the functions being performed by the various elements, the Examiner rejected Claim 1 and alleged that the processors 202/206 of Allen describe graphics processing circuitry, which is adapted to produce new content using the source content by transforming and combining the source content from the decoders to produce the new content. As previously argued Allen describes a system that inserts a local advertisement during a break in the national program based on cue tones. The local advertisement can use an overlay, but the inputs to the system are basically passed through to the output. There is

no transformation of the inputs to create new content, as required by Claims 1, 12 and 20.

See Response, page 6.

In light of the above, allowance of all of the pending claims is respectfully requested.

Respectfully submitted,



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